

No. B295935
**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

CITY OF SANTA MONICA,
Appellant-Defendant,
v.
PICO NEIGHBORHOOD ASSOCIATION and MARIA LOYA,
Respondents-Plaintiffs,

**DECLARATION OF KEVIN SHENKMAN IN SUPPORT OF
RESPONDENTS' RESPONSE TO APPELLANT'S MOTION FOR
CALENDAR PREFERENCE**

APPEAL FROM THE SUPERIOR COURT FOR THE COUNTY OF LOS ANGELES
THE HON. YVETTE M. PALAZUELOS, JUDGE PRESIDING
SUPERIOR COURT CASE NO. BC616804
DEPARTMENT 9, TELEPHONE: (213) 310-7009

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DECLARATION OF KEVIN SHENKMAN

I, Kevin Shenkman, declare as follows:

I am a partner with the law firm Shenkman & Hughes PC, counsel for Respondents Pico Neighborhood Association and Maria Loya in the above-referenced case. I am authorized to practice law in the State of California and submit this declaration in support of Respondents' response to Appellant's motion for calendar preference. The following matters are based upon my personal knowledge, and if called to testify to such facts, I could and would do so competently.

1. Attached hereto as Exhibit A is a true and correct copy of the Trial Court's Statement of Decision, dated February 13, 2019.

2. On the evening of April 24, I received an email from Appellant's counsel, Kahn Scolnick, advising that Appellant would be filing a motion for calendar preference on April 26, 2019, "asking for the Court to issue a decision by July 10, 2020" so that Appellant would "know one way or the other whether a November 2020 election could be held on an at-large basis, or whether it still would need to be district-based." The following day, I responded to Mr. Scolnick's email, stating that Respondents "too would like to see a prompt resolution of [the] appeal, and, at the same time, ensure sufficient time to prepare a responsive brief." I suggested that "[t]o that end, perhaps we should discuss stipulating to a briefing schedule that will ensure a decision sufficiently in advance

of the statewide general election in 2020,” and invited Mr. Scolnick to call me at his convenience. Mr. Scolnick responded later that evening, stating that he would “try to connect tomorrow.” A true and correct copy of this email exchange is attached hereto as Exhibit B.

3. However, Mr. Scolnick never called me on April 26, 2019, or at any other time, to discuss Appellant’s contemplated motion, or the potential for agreeing to a briefing schedule for the above-captioned appeal.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on May 1, 2019 in Malibu, California.



Kevin Shenkman

EXHIBIT “A”

FILED
Superior Court of the State of California
County of Los Angeles

FEB 13 2019

Sharon L. ...
...
...

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PICO NEIGHBORHOOD ASSOCIATION,) Case No.: BC616804
et al.)
)
Plaintiffs,) STATEMENT OF DECISION
)
vs.)
)
CITY OF SANTA MONICA,)
)
Defendant.)
)
)
)

Pursuant to CCP §632, the Court issues the following
Statement of Decision in support of its Judgment after court
trial:

INTRODUCTION

1. Plaintiffs' Pico Neighborhood Association ("PNA"), Maria
Loya ("Loya"), filed a First Amended Complaint alleging two
causes of action: 1) Violation of the California Voting Rights

1 Act of 2001 ("CVRA"); and 2) Violation of the Equal Protection
2 Clause of the California Constitution ("Equal Protection
3 Clause").

4 2. Defendants answered the Complaint denying each of the
5 foregoing allegations and raising certain affirmative defenses.

6 3. The action was tried before the Court on August 1, 2018
7 through September 13, 2018. After considering written closing
8 briefs, the Court issued its Tentative Decision on November 8,
9 2018, finding in favor of Plaintiffs on both causes of action.

10 4. On November 15, 2018, Defendant requested a statement of
11 decision.

12 5. The parties submitted further briefing regarding proposed
13 remedies, and on December 7, 2018 a hearing was held on the
14 issue of remedies. On December 12, 2018 the Court issued its
15 Amended Tentative Decision again finding in favor of Plaintiffs
16 on both causes of action. Defendant again requested a statement
17 of decision.
18

19 **THE CALIFORNIA VOTING RIGHTS ACT**

20 6. "At-large" voting is an election method that permits voters
21 of an entire jurisdiction to elect candidates to the seats of
22 its governing board and which permits a plurality of voters to
23 capture all of the available seats. Sanchez v. City of Modesto
24 (2006) 145 Cal.App.4th 660. The U.S. Supreme Court "has long
25 recognized that multi-member districts and at-large voting

1 schemes may operate to minimize or cancel out the voting
2 strength" of minorities. Thornburg v. Gingles (1986) 478 U.S.
3 30, 46-47; see also id. at 48, n. 14 (at-large elections may
4 also cause elected officials to "ignore [minority] interests
5 without fear of political consequences"), citing Rogers v. Lodge
6 (1982) 458 U.S. 613, 623; White v. Regester (1973) 412 U.S. 755,
7 769. In at-large elections, "the majority, by virtue of its
8 numerical superiority, will regularly defeat the choices of
9 minority voters." Gingles, supra, at 47.

10
11 7. Section 2 of the federal Voting Rights Act ("FVRA"), 52
12 U.S.C. § 10101, et seq., targets, among other things,
13 discriminatory at-large election schemes. Gingles, supra, 478
14 U.S. at 37. By enacting the CVRA, the California "Legislature
15 intended to expand protections against vote dilution over those
16 provided by the federal Voting Rights Act of 1965." Jauregui v.
17 City of Palmdale (2014) 226 Cal.App.4th 781, 808. The CVRA "was
18 enacted to implement the equal protection and voting guarantees
19 of article I, section 7, subdivision (a) and article II, section
20 2" of the California Constitution. Id. at 793, citing § 14031¹.

21 8. "Section 14027 [of the CVRA] sets forth the circumstances
22 where an at-large electoral system may not be imposed ...: 'An at-
23 large method of election may not be imposed or applied in a
24

25 ¹ Statutory citations are to the California Elections Code, unless otherwise indicated.

1 manner that impairs the ability of a protected class to elect
2 candidates of its choice or its ability to influence the outcome
3 of an election, as a result of the dilution or the abridgment of
4 the rights of voters who are members of a protected class, as
5 defined pursuant to Section 14026.'" Id., citing Sanchez,
6 supra, 145 Cal.App.4th at 669. Section 14028 of the CVRA
7 provides more clarity on how a violation of the CVRA is
8 established: "A violation of Section 14027 is established if it
9 is shown that racially polarized voting occurs in elections for
10 members of the governing body of the political subdivision or in
11 elections incorporating other electoral choices by the voters of
12 the political subdivision."
13

14 9. "Section 14026, subdivision (e) defines racially polarized
15 voting thusly: 'Racially polarized voting means voting in which
16 there is a difference, as defined in case law regarding
17 enforcement of the federal Voting Rights Act ([52 U.S.C. Sec.
18 10301 et seq.]), in the choice of candidates or other electoral
19 choices that are preferred by voters in a protected class, and
20 in the choice of candidates and electoral choices that are
21 preferred by voters in the rest of the electorate.'" Jauregui,
22 supra, 226 Cal.App.4th at 793.
23

24 10. "Proof of racially polarized voting patterns are
25 established by examining voting results of elections where at
least one candidate is a member of a protected class; elections

1 involving ballot measures; or other 'electoral choices that
2 affect the rights and privileges' of protected class members."
3 Jauregui, supra, 226 Cal.App.4th at 793 citing § 14028 subd.

4 (b). Racially polarized voting can be shown through
5 quantitative statistical evidence, using the methods approved in
6 federal Voting Rights Act cases. Id. at 794, quoting § 14026,
7 subd. (e). ("The methodologies for estimating group voting
8 behavior as approved in applicable federal cases to enforce the
9 federal Voting Rights Act [52 U.S.C. Sec. 10301 et seq.] to
10 establish racially polarized voting may be used for purposes of
11 this section to prove that elections are characterized by
12 racially polarized voting.") Additionally, "[t]here are a
13 variety of [other] factors a court may consider in determining
14 whether an at-large electoral system impairs a protected class's
15 ability to elect candidates or otherwise dilute their voting
16 power," including "the extent to which candidates who are
17 members of a protected class and who are preferred by voters of
18 the protected class, as determined by an analysis of voting
19 behavior, have been elected to the governing body of a political
20 subdivision that is the subject of an action" (§ 14028, subd.
21 (b)) and the qualitative factors listed in Section 14028 subd.
22
23
24
25

1 (e) which "are probative, but not necessary factors to establish
2 a violation of [the CVRA]".² Ibid. at 794.

3 11. Equally important to an understanding of the CVRA is what
4 the CVRA directs the Court to consider in acknowledging what
5 need not be shown to establish a violation of the CVRA. While
6 the CVRA is similar to the FVRA in several respects, it is also
7 different in several key respects, as the Legislature sought to
8 remedy what it considered "restrictive interpretations given to
9 the federal act." Assem. Com. on Judiciary, Analysis of Sen.
10 Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, at
11 2. For example: a) Unlike the FVRA, to establish a violation
12 of the CVRA, plaintiffs need not show that a "majority-minority"
13 district can be drawn. § 14028, subd. (c); Sanchez, supra, 145
14 Cal.App.4th at 669; b) Likewise, the factors enumerated in
15 section 14028 subd. (e), which are modeled on, but also differ
16 from, the FVRA's "Senate factors," are "not necessary [] to
17 establish a violation." § 14028, subd. (e); and c) "[P]roof of
18 an intent to discriminate is [also] not an element of a
19
20
21

22 ² Section 14028 subd. (e) provides: "Other factors such as the history of
23 discrimination, the use of electoral devices or other voting practices or
24 procedures that may enhance the dilutive effects of at-large elections,
25 denial of access to those processes determining which groups of candidates
will receive financial or other support in a given election, the extent to
which members of a protected class bear the effects of past discrimination in
areas such as education, employment, and health, which hinder their ability
to participate effectively in the political process, and the use of overt or
subtle racial appeals in political campaigns are probative, but not necessary
factors to establish a violation of Section 14027 and this section."

1 violation of [the CVRA]." Jauregui, supra, 226 Cal.App.4th at
2 794, citing § 14028, subd. (d).

3 12. The appellate courts that have addressed the CVRA have
4 noted that showing racially polarized voting establishes the at-
5 large election system dilutes minority votes and therefore
6 violates the CVRA. Rey v. Madera Unified School Dist. (2012)
7 203 Cal.App.4th 1223, 1229 ("To prove a CVRA violation, the
8 plaintiffs must show that the voting was racially polarized.
9 However, they do not need to either show that members of a
10 protected class live in a geographically compact area or
11 demonstrate a discriminatory intent on the part of voters or
12 officials."); Jauregui, supra, 226 Cal.App.4th at 798 ("The
13 trial court's unquestioned findings [concerning racially
14 polarized voting] demonstrate that defendant's at-large system
15 dilutes the votes of Latino and African American voters."); see
16 also Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976
17 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, at 2 (The CVRA
18 "addresses the problem of racial block voting, which is
19 particularly harmful to a state like California due to its
20 diversity.")
21 diversity.")

22 13. The key element under the CVRA—"racially polarized voting"—
23 consists of two interrelated elements: (1) "the minority group .
24 . . is politically cohesive[;]" and (2) "the White majority
25 votes sufficiently as a bloc to enable it—in the absence of

1 special circumstances—usually to defeat the minority's preferred
2 candidate." Gomez v. City of Watsonville (9th Cir. 1988) 863
3 F.2d 1407, 1413, quoting Gingles, supra, 478 U.S. at 50-51. It
4 is the combination of plurality-winner at-large elections and
5 racially polarized voting that yields the harm the CVRA is
6 intended to combat. Jauregui, supra, 226 Cal.App.4th at 789
7 (describing how vote dilution is proven in FVRA cases and how
8 vote dilution is differently proven in CVRA cases). To an even
9 greater extent than the FVRA, the CVRA expressly directs the
10 courts, in analyzing "elections for members of the governing
11 body of the [defendant]" to focus on those "elections in which
12 at least one candidate is a member of a protected class." §
13 14028, subds. (a), (b).

14 14. Once liability is established under the CVRA, the Court has
15 a broad range of remedies from which to choose in order to
16 provide greater electoral opportunity, including both district
17 and non-district solutions. § 14029; Sanchez, supra, 145
18 Cal.App.4th at 670; Jauregui, supra, 226 Cal.App.4th at 808
19 ("The Legislature intended to expand protections against vote
20 dilution over those provided by the federal Voting Rights Act.
21 It is incongruous to intend this expansion of vote dilution
22 liability but then constrict the available remedies in the
23 electoral context to less than those in the Voting Rights Act.
24 The Legislature did not intend such an odd result.")
25

1 15. In light of the broad range of remedies available to the
2 Court, a plaintiff need not demonstrate the desirability of any
3 particular remedy to establish a violation of the CVRA. §
4 14028, subd. (a); Assem. Com. on Judiciary, Analysis of Sen.
5 Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, p.
6 3 ("Thus, this bill puts the voting rights horse (the
7 discrimination issue) back where it sensibly belongs in front of
8 the cart (what type of remedy is appropriate once racially
9 polarized voting has been shown.)")

11 Defendant's "At Large" Elections³ Are Consistently Plagued By
12 Racially Polarized Voting

13 16. The CVRA defines "racially polarized voting" as "voting in
14 which there is a difference, as defined in case law regarding
15 enforcement of the federal Voting Rights Act (42 U.S.C. § 1973
16 et seq.), in the choice of candidates or other electoral choices
17 that are preferred by voters in a protected class, and in the
18 choice of candidates and electoral choices that are preferred by
19 voters in the rest of the electorate." § 14026, subd. (e).

22
23 ³ The CVRA defines "[a]t-large method of election" as including any method
24 in which the voters of the entire jurisdiction elect the members to the
25 governing body." § 14026 subd. (a). Though the parties did not stipulate to
this element, Defendant has never disputed that it employs an at-large method
of electing its city council. The CVRA explicitly grants standing to "any
voter who is a member of a protected class and who resides in a political
subdivision where a violation of [the CVRA] is alleged." (§ 14032). Though
the parties did not stipulate to this element, Defendant has never disputed
that Plaintiffs Maria Loya and Pico Neighborhood Association have standing.

1 17. The federal jurisprudence regarding "racially polarized
2 voting" over the past thirty-two years finds its roots in
3 Justice Brennan's decision in Gingles, and in particular, the
4 second and third "Gingles factors." Justice Brennan explained
5 that racially polarized voting is tested by two criteria: (1)
6 the minority group is politically cohesive; and (2) the majority
7 group votes sufficiently as a bloc to enable it to usually
8 defeat the minority group's preferred candidates. Gingles,
9 supra, 478 U.S. at 30, 51.

10
11 18. A minority group is politically cohesive where it supports
12 its preferred choices to a significantly greater degree than the
13 majority group supports those same choices; in elections for
14 office (as opposed to ballot measures), the CVRA focuses on
15 elections in which at least one candidate is a member of the
16 protected class of interest (§ 14028(b)), because those
17 elections usually offer the most probative test of whether
18 voting patterns are racially polarized. Gomez, supra, 863 F. 2d
19 at 1416 ("The district court expressly found that predominantly
20 Hispanic sections of Watsonville have, in actual elections,
21 demonstrated near unanimous support for Hispanic candidates.
22 This establishes the requisite political cohesion of the
23 minority group.") The extent of majority "bloc voting"
24 sufficient to show racially polarized voting is that which
25

1 allows the White majority to "usually defeat the minority
2 group's preferred candidate." Ibid.

3 19. As Justice Brennan explained, it is through establishment
4 of this element that impairment is shown-i.e. that the "at-large
5 method of election [is] imposed or applied in a manner that
6 impairs the ability of a protected class to elect candidates of
7 its choice or its ability to influence the outcome of an
8 election." § 14027; Gingles, supra, 478 U.S. at 51 ("In
9 establishing this last circumstance, the minority group
10 demonstrates that submergence in a white multimember district
11 impedes its ability to elect its chosen representatives.")

12 20. Gingles also set forth appropriate methods of identifying
13 racially polarized voting; since individual ballots are not
14 identified by race, race must be imputed through ecological
15 demographic and political data. The long-approved method of
16 ecological regression ("ER") yields statistical power to
17 determine if there is racially polarized voting if there are not
18 a sufficient number of racially homogenous precincts (90% or
19 more of the precinct is of one particular ethnicity). Benavidez
20 v. City of Irving (N.D. Tex. 2009) 638 F.Supp.2d 709, 723 ("HPA
21 [homogenous precinct analysis] and ER [ecological regression]
22 were both approved in Gingles and have been utilized by numerous
23 courts in Voting Rights Act cases.") The CVRA expressly adopts
24 methods like ER that have been used in federal Voting Rights Act
25

1 cases to demonstrate racially polarized voting. § 14026, subd.
2 (e) ("The methodologies for estimating group voting behavior as
3 approved in applicable federal cases to enforce the federal
4 Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.) to
5 establish racially polarized voting may be used for purposes of
6 this section to prove that elections are characterized by
7 racially polarized voting.")

8
9 21. At trial, Plaintiffs and Defendant offered the statistical
10 analyses of their respective experts - Dr. J. Morgan Kousser and
11 Dr. Jeffrey Lewis, respectively. Though the details and methods
12 of their respective analyses differed in minor ways, the
13 analyses by Plaintiffs' and Defendant's experts reveal the same
14 thing - Santa Monica elections that are legally relevant under
15 the CVRA are racially polarized.⁴ Analyzing elections over the
16 past twenty-four years, a consistent pattern of racially-
17 polarized voting emerges. In most elections where the choice is
18 available, Latino voters strongly prefer a Latino candidate
19 running for Defendant's city council, but, despite that support,
20 the preferred Latino candidate loses. As a result, though
21

22
23 ⁴ Dr. Kousser opined that his analysis demonstrates racially polarized voting.
24 Though he had done so in other cases, Dr. Lewis reached no conclusions about
25 racially polarized voting in this case, and declined to opine about whether
his analysis demonstrated racially polarized voting. Another of Plaintiffs'
experts, Justin Levitt, evaluated the results of Dr. Lewis' statistical
analyses, and concluded, like Dr. Kousser, that all of the relevant elections
evaluated by Dr. Lewis exhibit racially polarized voting, including in some
instances racial polarization that is so "stark" that it is similar to the
polarization "in the late '60s in the Deep South."

1 Latino candidates are generally preferred by the Latino
2 electorate in Santa Monica, only one Latino has been elected to
3 the Santa Monica City Council in the 72 years of the current
4 election system - 1 out of 71 to serve on the city council.

5 22. Dr. Kousser, a Caltech professor who has testified in many
6 voting rights cases spanning more than 40 years, analyzed the
7 elections specified by the CVRA: "elections for members of the
8 governing body of the political subdivision . . . in which at
9 least one candidate is a member of a protected class." § 14028
10 subds. (a), (b). The CVRA's focus on elections involving
11 minority candidates is consistent with the view of a majority of
12 federal circuit courts that racially-contested elections are
13 most probative of an electorate's tendencies with respect to
14 racially polarized voting.⁵
15

16
17 ⁵ U.S. v. Blaine Cty., Mont. (9th Cir. 2004) 363 F.3d 897, 911 (rejecting
18 defendant's argument that trial court must give weight to elections involving
19 no minority candidates); Ruiz v. City of Santa Maria (9th Cir. 1998) 160 F.3d
20 543, 553 ("minority v. non-minority election is more probative of racially
21 polarized voting than a non-minority v. non-minority election" because "[t]he
22 Act means more than securing minority voters' opportunity to elect whites.");
23 Westwego Citizens for Better Gov't v. City of Westwego (5th Cir.1991) 946
24 F.2d 1109, 1119, n. 15 ("[T]he evidence most probative of racially polarized
25 voting must be drawn from elections including both black and white
candidates."); League of United Latin Am. Citizens, Council No. 4434 v.
Clements (5th Cir. en banc 1993) 999 F.2d 831, 864 ("This court has
consistently held that elections between white candidates are generally less
probative in examining the success of minority-preferred candidates . . .
."); Citizens for a Better Gretna v. City of Gretna, La. (5th Cir.1987) 834
F.2d 496, 502 ("That blacks also support white candidates acceptable to the
majority does not negate instances in which white votes defeat a black
preference [for a black candidate]."); Jenkins v. Red Clay Consol. School
Dist. Bd. of Educ. (3d Cir. 1993) 4 F.3d 1103, 1128-1129 ("The defendants
also argue that the plaintiffs may not selectively choose which elections to
analyze, but rather must analyze all the elections, including those involving
only white candidates. It is only on the basis of such a comprehensive

1 23. In those elections, Dr. Kousser focused on the level of
2 support for minority candidates from minority voters and
3 majority voters respectively, just as the Court in Gingles, and
4 many lower courts since then, have done. Gingles, supra, 478
5 U.S. at 58-61 ("We conclude that the District Court's approach,
6 which tested data derived from three election years in each
7 district, and which revealed that blacks strongly supported
8 black candidates, while, to the black candidates' usual
9 detriment, whites rarely did, satisfactorily addresses each
10 facet of the proper legal standard."); Id. at 81 (Appendix A -
11 providing Dr. Grofman's ecological regression estimates for
12 support for Black candidates from, respectively, White and Black
13 voters); see also, e.g., Garza v. Cnty. of Los Angeles (C.D.
14 Cal. 1990) 756 F. Supp. 1298, 1335-37, aff'd, 918 F.2d 763 (9th
15 Cir. 1990) (summarizing the bases on which the court found
16 racially polarized voting: "The results of the ecological
17 regression analyses demonstrated that for all elections
18 analyzed, Hispanic voters generally preferred Hispanic
19 candidates over non-Hispanic candidates. ... Of the elections
20 analyzed by plaintiffs' experts non-Hispanic voters provided
21 majority support for the Hispanic candidates in only three
22 elections, all partisan general election contests in which party
23
24

25 analysis, the defendants submit, that the court is able to evaluate whether
or not there is a pattern of white bloc voting that usually defeats the
minority voters' candidate of choice. We disagree.")

1 affiliation often influences the behavior of voters"); Benavidez
2 v. Irving Indep. Sch. Dist. (N.D. Tex. 2014) 2014 WL 4055366,
3 *11-12 (finding racially polarized voting based on Dr.

4 Engstrom's analysis which the court described as follows: "Dr.
5 Engstrom then conducted a statistical analysis ... to estimate the
6 percentage of Hispanic and non-Hispanic voters who voted for the
7 Hispanic candidate in each election. ... Based on this analysis,
8 Dr. Engstrom opined that voting in Irving ISD trustee elections
9 is racially polarized.")

10
11 24. In its closing brief, Defendant argued that the Supreme
12 Court in Gingles held that the race of a candidate is
13 "irrelevant," but what Defendant fails to recognize is that the
14 portion of Gingles it relies upon did not command a majority of
15 the Court, and Defendant's reading of Gingles has been rejected
16 by federal circuit courts in favor of a more practical race-
17 sensitive analysis. Ruiz v. City of Santa Maria, supra, 160
18 F.3d at 550-53 (collecting other cases rejecting Defendant's
19 view and noting that "non-minority elections do not provide
20 minority voters with the choice of a minority candidate and thus
21 do not fully demonstrate the degree of racially polarized voting
22 in the community.") To the extent there is any doubt about
23 whether the race of a candidate impacts the analysis in FVRA
24 cases, there can be no doubt under the CVRA; the statutory
25 language mandates a focus on elections involving minority

1 candidates. §14028 subd.(b) ("The occurrence of racially
2 polarized voting shall be determined from examining results of
3 elections in which at least one candidate is a member of a
4 protected class ... One circumstance that may be considered ... is
5 the extent to which candidates who are members of a protected
6 class and who are preferred by voters of the protected class ...
7 have been elected to the governing body of the political
8 subdivision that is the subject of an action ..."). In this
9 analysis, it is not that minority support for minority
10 candidates is presumed; to the contrary, it must be
11 demonstrated. But both the CVRA and federal case law recognize
12 that the most probative test for minority voter support and
13 cohesion usually involves an election with the option of a
14 minority candidate.
15

16 25. Dr. Kousser provided the details of his analysis, and
17 concluded those elections demonstrate legally significant
18 racially polarized voting.⁶ Specifically, Dr. Kousser evaluated
19 the 7 elections for Santa Monica City Council between 1994 and
20 2016 that involved at least one Spanish-surnamed candidate⁷ and
21

22
23 ⁶ Dr. Kousser presented his analyses using unweighted ER, weighted ER and
24 ecological inference ("EI"). Dr. Kousser explained that, of these three
25 statistical methods, weighted ER is preferable in this case. Dr. Kousser's
conclusions were the same for each of these three methods, so, for the sake
of brevity, only his weighted ER analysis is duplicated here.

⁷ One of Defendant's city council members, Gleam Davis, testified that she
considers herself Latina because her biological father was of Hispanic
descent (she was adopted at an early age by non-Hispanic white parents).

provided both the point estimates of group support for each candidate as well as the corresponding statistical errors (in parentheses in the charts below):

Weighted Ecological Regression⁸

Year	Latino Candidate(s)	% Latino Support	% Non- Hispanic White Support	Polarized	Won?
1994	Vazquez	145.5 (28.0)	34.9 (1.9)	Yes	No
1996	Alvarez	22.2 (12.9)	15.8 (1.1)	No	No
2002	Aranda	82.6 (12.6)	16.5 (1.3)	Yes	No
2004	Loya	106.0 (12.3)	21.2 (2.0)	Yes	No
2008	Piera-Avila	33.3 (5.2)	5.7 (0.8)	Yes	No

Though that may be true, the Santa Monica electorate does not recognize her as Latina, as demonstrated by the telephone survey of registered voters conducted by Jonathan Brown; even her fellow council members did not realize she considered herself to be Latina until after the present case was filed. Consistent with the purpose of considering the race of a candidate in assessing racially polarized voting, it is the electorate's perception that matters, not the unknown self-identification of a candidate. Paragraph 24 herein.

⁸ Because each voter could cast votes for up to three or four candidates in a particular election, Prof. Kousser estimated the portion of voters, from each ethnic group, who cast at least one vote for each candidate.

2012	Vazquez	92.7	19.1 (2.0)	Yes	Yes
	Gomez	(9.0)	2.9 (0.7)	Yes	No
	Duron	30.4	4.4 (0.6)	No	No
		(3.3)			
		5.0			
		(2.6)			
2016	de la Torre	88.0	12.9 (1.5)	Yes	No
	Vazquez	(6.0)	36.6 (2.3)	Yes	Yes
		78.3			
		(9.0)			

26. Non-Hispanic Whites voted statistically significantly differently from Latinos in 6 of the 7 elections. The ecological regression analyses of these elections also reveals that when Latino candidates run for the Santa Monica City Council, Latino voters cohesively support those Latino candidates - in all but one of those six elections, a Latino candidate received the most Latino votes, often by a large margin. And in all but one of those six elections, the Latino candidate most favored by Latino voters lost, making the racially polarized voting legally significant. Gingles, supra, 478 U.S. at 56 ("in general, a white bloc vote that normally will defeat the combined strength of minority support plus white 'crossover' votes rises to the level of legally significant white bloc voting.") Even in that one instance (2012 - Tony

1 Vazquez), the Latino candidate who won came in fourth in a four-
2 seat race in that unusual election, in which none of the
3 incumbents who had won four years earlier sought re-election.

4 Id. at 57, fn. 26 ("Furthermore, the success of a minority
5 candidate in a particular election does not necessarily prove
6 that the district did not experience polarized voting in that
7 election; special circumstances, such as the absence of an
8 opponent, incumbency, or the utilization of bullet voting, may
9 explain minority electoral success in a polarized contest. This
10 list of special circumstances is illustrative, not exclusive.")
11

12 27. In summary, Dr. Kousser's analysis revealed:

13 • In 1994, Latino voters heavily favored the lone Latino
14 candidate - Tony Vazquez - but he lost.

15 • In 2002, the lone Latina candidate and resident of the Pico
16 Neighborhood - Josefina Aranda - was heavily favored by Latino
17 voters, but she lost.

18 • In 2004, the lone Latina candidate and resident of the Pico
19 Neighborhood - Maria Loya - was heavily favored by Latino
20 voters, but she lost.
21
22
23
24
25

1 • In 2008, the lone Latina candidate and resident of the Pico
2 Neighborhood - Linda Piera-Avila - received significant support
3 from Latino voters.⁹

4 • In 2012, two incumbents - Richard Bloom and Bobby Shriver -
5 decided not to run for re-election, and the two other incumbents
6 who had prevailed in 2008 - Ken Genser and Herb Katz - died
7 during their 2008-12 terms. The leading Latino candidate - Tony
8 Vazquez - was heavily favored by Latino voters but did not
9 receive nearly as much support from non-Hispanic White voters.
10 He was able to eke out a victory, coming in fourth place in this
11 four-seat race.
12

13 • Finally, in 2016, a race for four city council positions,
14 Oscar de la Torre - a Latino resident of the Pico Neighborhood -
15 was heavily favored by Latinos, but lost. In 2016, Mr. de la
16 Torre received more support from Latinos than did Mr. Vazquez.
17 This is the prototypical illustration of legally significant
18 racially polarized voting - Latino voters favor Latino
19 candidates, but non-Latino voters vote against those candidates,
20 and therefore the favored candidates of the Latino community
21

22
23 ⁹ At trial, Dr. Kousser explained that even though Ms. Piera-Avila did not
24 receive support from a majority of Latinos, the contrast between the levels
25 of support she received from Latinos and non-Hispanic whites, respectively,
nonetheless demonstrate racially polarized voting, just as the Gingles court
found very similar levels of support for Mr. Norman in the 1978 and 1980
North Carolina House races to likewise be consistent with a finding of
racially polarized voting. Gingles, supra, 478 U.S. at 81, Appx. A.

1 lose. Gingles, supra, 478 U.S. at 58-61 ("We conclude that the
2 District Court's approach, which tested data derived from three
3 election years in each district, and which revealed that blacks
4 strongly supported black candidates, while, to the black
5 candidates' usual detriment, whites rarely did, satisfactorily
6 addresses each facet of the proper legal standard.")

7
8 28. Defendant argues that the Court should disregard Mr. de la
9 Torre's 2016 candidacy because, according to Defendant, Mr. de
10 la Torre intentionally lost that election. But Defendant
11 presented no evidence that Mr. de la Torre did not try to win
12 that election, and Mr. de la Torre unequivocally denied that he
13 deliberately attempted to lose that election. And, the ER
14 analysis by Dr. Lewis further undermines Defendant's assertion -
15 Mr. de la Torre received essentially the same level of support
16 from Latino voters in the 2016 council election as he did in his
17 2014 election for school board, an odd result if Mr. de la Torre
18 had tried to win one election and lose the other.

19 29. All of this led Dr. Kousser to conclude: "[b]etween 1994
20 and 2016 [] Santa Monica city council elections exhibit legally
21 significant racially polarized voting" and "the at-large
22 election system in Santa Monica result[s] in Latinos having less
23 opportunity than non-Latinos to elect representatives of their
24 choice" to the city council. This Court agrees.
25

30. Defendant's expert, Dr. Lewis, did not disagree. In fact, he confirmed all of the indicia of racially polarized voting in all of the Santa Monica City Council elections he analyzed involving at least one Latino candidate, as well as in other elections. Specifically, Dr. Lewis confirmed that his ER and EI results demonstrate: (1) that the Latino candidates for city council generally received the most votes from Latino voters; (2) that those Latino candidates received far less support from non-Hispanic Whites; and (3) the difference in levels of support between Latino and non-Hispanic White voters were statistically significant applying even a 95% confidence level (with the lone exception of Steve Duron):

Year	Latino Candidate(s)	% Latino Support	% Non- Hispanic White Support
2002	Aranda	69 (10)	16 (1)
2004	Loya	106 (14)	21 (2)
2008	Piera-Avila	32 (4)	6 (1)
2012	Vazquez	90 (6)	20 (1)
	Gomez	29 (2)	3 (1)
	Duron	5 (2)	4 (0)
2016	de la Torre	87 (4)	14 (1)
	Vazquez	65 (7)	34 (2)

31. Dr. Lewis also analyzed elections for other local offices (e.g. school board and college board) and ballot measures such as Propositions 187 (1994), 209 (1996) and 227 (1998). The instant case concerns legal challenges to the election structure for the Santa Monica City Council; where there exist legally relevant election results concerning the Santa Monica City Council, those elections will necessarily be most probative. Consistent with FVRA cases that have addressed the relevance and weight of "exogenous" elections, this Court gives exogenous elections less weight than the endogenous elections discussed above. Bone Shirt v. Hazeltine (8th Cir. 2006) 461 F.3d 1011 (acknowledging that exogenous elections are of much less probative value than endogenous elections, some federal courts have relied upon exogenous elections involving minority candidates to further support evidence of racially polarized voting in endogenous elections); Jenkins, supra, 4 F.3d at 1128-1129 (same); Rodriguez v. Harris Cnty, Texas (2013) 964 F.Supp.2d 686 (same); Citizens for a Better Gretna, supra, 834 F.2d at 502-503 ("Although exogenous elections alone could not prove racially polarized voting in Gretna aldermanic elections, the district court properly considered them as additional evidence of bloc voting - particularly in light of the sparsity of available data."); Clay v. Board of Educ. of City of St. Louis (8th Cir. 1996) 90 F.3d 1357, 1362 (exogenous elections

1 "should be used only to supplement the analysis of" endogenous
2 elections); Westwego Citizens for Better Gov't, supra, 946 F.2d
3 at 1109 (analysis of exogenous elections appropriate because no
4 minority candidates had ever run for the governing board of the
5 defendant).

6 32. The focus on endogenous elections is particularly
7 appropriate in this case because, as several witnesses
8 confirmed, the political reality of Defendant's city council
9 elections is very different than that of elections for other
10 governing boards with more circumscribed powers, such as school
11 board and rent board. Dr. Lewis' ER and EI analyses show that
12 non-Hispanic White voters in Santa Monica will support Latino
13 candidates for offices other than city council. For example,
14 according to Dr. Lewis, Mr. de la Torre received votes from 88%
15 of Latino voters and 33% of non-Hispanic White voters in his
16 school board race in 2014, and when he ran for city council just
17 two years later he received essentially the same level of
18 support from Latino voters (87%) but much less support from non-
19 Hispanic Whites (14%) than he had received in the school board
20 race.
21

22 33. Regardless of the weight given to exogenous elections, they
23 may not be used to undermine a finding of racially polarized
24 voting in endogenous elections. Bone Shirt, supra, 461 F.3d at
25 1020-1021 ("Endogenous and interracial elections are the best

1 indicators of whether the white majority usually defeats the
2 minority candidate... Although they are not as probative as
3 endogenous elections, exogenous elections hold some probative
4 value."); Rural West Tenn. African American Affairs Council v.
5 Sundquist (W.D. Tenn. 1998) 29 F.Supp.2d 448, 457 ("Certainly,
6 the voting patterns in exogenous elections cannot defeat
7 evidence, statistical or otherwise, about endogenous
8 elections."), quoting Cofield v. City of LaGrange, Ga.
9 (N.D.Ga.1997) 969 F.Supp. 749, 773. To hold otherwise would
10 only serve to perpetuate the sort of glass ceiling that the CVRA
11 and FVRA are intended to eliminate.
12

13 34. Nonetheless, exogenous elections in Santa Monica further
14 support the conclusion that the levels of support for Latino
15 candidates from Latino and non-Hispanic White voters,
16 respectively, is always statistically significantly different,
17 with non-Hispanic White voters consistently voting against the
18 Latino candidates who are overwhelmingly supported by Latino
19 voters.
20

Election	Latino Candidate(s)	% Latino Support	% Non-Hispanic White Support
2002 - school board	de la Torre	107 (13)	34 (2)
2004 - school	Jara	113 (13)	37 (2)

1	board	Leon-Vazquez	98 (9)	44 (2)
2		Escarce	74 (8)	44 (1)
3	2004 - college	Quinones-Perez	55 (5)	21 (1)
4	board			
5	2006 - school	de la Torre	95 (12)	40 (1)
6	board			
7	2008 - school	Leon-Vazquez	101 (8)	40 (1)
8	board	Escarce	68 (6)	36 (1)
9				
10	2008 - college	Quinones-Perez	58 (6)	35 (1)
11	board			
12	2010 - school	de la Torre	94 (8)	33 (1)
13	board			
14	2012 - school	Leon-Vazquez	92 (7)	32 (1)
15	board	Escarce	62 (6)	29 (1)
16	2014 - school	de la Torre	88 (7)	33 (1)
17	board			
18	2014 - college	Loya	84 (3)	27 (1)
19	board			
20				
21	2014 - rent	Duron	46 (8)	23 (1)
22	board			
23	2016 - college	Quinones-Perez	85 (5)	36 (1)
24	board			

25 35. While he provided his estimates based on ER and EI, Dr. Lewis also questioned the propriety of using those methods. Dr.

1 Lewis showed that the "neighborhood model" yields different
2 estimates, but the neighborhood model does not fit real-world
3 patterns of voting behavior for particular candidates and the
4 use of the neighborhood model to undermine ER has been rejected
5 by other courts. Garza, supra, 756 F.Supp. at 1334. Dr. Lewis
6 claimed that the lack of data from predominantly Hispanic
7 precincts in Santa Monica renders the ER and EI estimates
8 unreliable, but that argument too has been rejected by the
9 courts. Fabela v. City of Farmers Branch, Tex. (N.D. Tex. Aug.
10 2, 2012) 2012 WL 3135545, *10-11, n. 25, n. 33 (relying on EI
11 despite the absence of "precincts with a high concentration of
12 Hispanic voters"); Benavidez, supra, 638 F.Supp.2d at 724-25
13 (approving use of ER and EI where the precincts analyzed all had
14 "less than 35%" Spanish-surnamed registered voters); Perez v.
15 Pasadena Indep. Sch. Dist. (S.D. Tex. 1997) 958 F.Supp. 1196,
16 1205, 1220-21, 1229, aff'd (5th Cir. 1999) 165 F.3d 368 (relying
17 on ER to show racially polarized voting where the polling place
18 with the highest Latino population was 35% Latino). To
19 disregard ER and EI estimates because of a lack of predominantly
20 minority precincts would also be contrary to the intent of the
21 Legislature in expressly disavowing a requirement that the
22 minority group is concentrated. § 14028 subd. (c) ("[t]he fact
23 that members of a protected class are not geographically compact
24
25

1 or concentrated may not preclude a finding of racially polarized
2 voting.")

3 36. Moreover, the comparably low percentage of Latinos among
4 the actual voters in Santa Monica precincts is due in part to
5 the reduced rates of voter registration and turnout among
6 eligible Latino voters. Where limitations in the data derive
7 from reduced political participation by members of the protected
8 class, it would be inappropriate to discard the ER results on
9 that basis, because to do so "would allow voting rights cases to
10 be defeated at the outset by the very barriers to political
11 participation that Congress has sought to remove." Perez,
12 supra, 958 F.Supp. at 1221 quoting Clark v. Calhoun Cty. (5th
13 Cir. 1996) 88 F.3d 1393, 1398.

15 37. Dr. Lewis argued that using Spanish-surname matching to
16 estimate the Latino proportion of voting precincts causes a
17 "skew," but he also acknowledged that Spanish surname matching
18 is the best method for estimating the Latino proportion of each
19 precinct, and the conclusion of racially polarized voting in
20 this case would not change even if the estimates were adjusted
21 to account for any skew. Finally, Dr. Lewis showed that ER and
22 EI do not produce accurate estimates of Democratic Party
23 registration among Latinos in Santa Monica, but that does not
24 undermine the validity or propriety of ER and EI to estimate
25

1 voting behavior in this case. Luna v. Cnty. of Kern (E.D. Cal.
2 2018) 291 F.Supp.3d 1088, 1123-25 (rejecting the same argument).
3 38. Most importantly, the CVRA directs the Court to credit the
4 statistical methods accepted by federal courts in FVRA cases,
5 including ER and EI, and Dr. Lewis did not suggest or employ any
6 method that could more accurately estimate group voting behavior
7 in Santa Monica. § 14026 subd. (e) ("The methodologies for
8 estimating group voting behavior as approved in applicable
9 federal cases to enforce the federal Voting Rights Act of 1965
10 [52 U.S.C. Sec. 10301 et seq.] to establish racially polarized
11 voting may be used for purposes of this section to prove that
12 elections are characterized by racially polarized voting.")
13
14 39. In its closing brief, Defendant argues that there is no
15 racially polarized voting because at least half of what
16 Defendant calls "Latino-preferred" candidacies have been
17 successful in Santa Monica. But that mechanical approach
18 suggested by Defendant - treating a Latino candidate who
19 receives the most votes from Latino voters (and loses, based on
20 the opposition of the non-Hispanic White electorate) the same as
21 a White candidate who receives the second, third or fourth-most
22 votes from Latino voters (and wins, based on the support of the
23 non-Hispanic White electorate) - has been expressly rejected by
24 the courts. Ruiz, supra, 160 F.3d at 554 (rejecting the
25 district court's "mechanical approach" that viewed the victory

1 of a White candidate who was the second-choice of Latinos in a
2 multi-seat race as undermining a finding of racially polarized
3 voting where Latinos' first choice was a Latino candidate who
4 lost: "The defeat of Hispanic-preferred Hispanic candidates,
5 however, is more probative of racially polarized voting and is
6 entitled to more evidentiary weight. The district court should
7 also consider the order of preference non-Hispanics and
8 Hispanics assigned Hispanic-preferred Hispanic candidates as
9 well as the order of overall finish of these candidates."); see
10 also id. at 553 ("But the Act's guarantee of equal opportunity
11 is not met when . . . [c]andidates favored by [minorities] can
12 win, but only if the candidates are white." (citations and
13 internal quotations omitted)); Smith v. Clinton (E.D. Ark. 1988)
14 687 F.Supp. 1310, 1318, aff'd, 488 U.S. 988 (1988) (it is not
15 enough to avoid liability under the FVRA that "candidates
16 favored by blacks can win, but only if the candidates are
17 white."); Clarke v. City of Cincinnati (6th Cir. 1994) 40 F.3d
18 807, 812 (voting rights laws' "guarantee of equal opportunity is
19 not met when [] candidates favored by [minority voters] can win,
20 but only if the candidates are white.")

22 40. An approach that accounts for the political realities of
23 the jurisdiction is required, particularly in light of purpose
24 of the CVRA. Jauregui, supra, 226 Cal.App.4th at 807 ("Thus,
25 the Legislature intended to expand the protections against vote

1 dilution provided by the federal Voting Rights Act of 1965.");
2 Assem. Com. on Judiciary, 'Analysis of Sen. Bill No. 976 (2001-
3 2002 Reg. Sess.) as amended Apr. 9, 2002, at 2 (the Legislature
4 sought to remedy what it considered "restrictive interpretations
5 given to the federal act."); Cf. Gingles, supra, 478 U.S. at 62-
6 63 ("appellants' theory of racially polarized voting would
7 thwart the goals Congress sought to achieve when it amended § 2,
8 and would prevent courts from performing the 'functional'
9 analysis of the political process, and the 'searching practical
10 evaluation of the past and present reality'"). To disregard or
11 discount both the order of preference of minority voters and the
12 demonstrated salience of the races of the candidates, as
13 Defendant suggests, would actually exculpate discriminatory at-
14 large election systems where there is a paucity of minority
15 candidates willing to run in the at-large system - itself a
16 symptom of the discriminatory election system. Westwego
17 Citizens for Better Government, supra, 872 F. 2d at 1208-1209,
18 n. 9 ("it is precisely this concern that underpins the refusal
19 of this court and of the Supreme Court to preclude vote dilution
20 claims where few or no black candidates have sought offices in
21 the challenged electoral system. To hold otherwise would allow
22 voting rights cases to be defeated at the outset by the very
23 barriers to political participation that Congress has sought to
24 remove.")
25

1 41. No doubt, a minority group can prefer a non-minority
2 candidate and, in a multi-seat plurality at-large election, can
3 prefer more than one candidate, perhaps to varying degrees, but
4 that does not mean that this Court should blind itself to the
5 races of the candidates, the order of preference of minority
6 voters, and the political realities of Defendant's elections.
7 When Latino candidates have run for Santa Monica's city council,
8 they have been overwhelmingly supported by Latino voters,
9 receiving more votes from Latino voters than any other
10 candidates. And absent unusual circumstances, because the
11 remainder of the electorate votes against the candidates
12 receiving overwhelming support from Latino voters, those
13 candidates generally still lose. That demonstrates legally
14 relevant racially polarized voting under the CVRA. Gingles,
15 supra, 478 U.S. at 58-61 ("We conclude that the District Court's
16 approach, which tested data derived from three election years in
17 each district, and which revealed that blacks strongly supported
18 black candidates, while, to the black candidates' usual
19 detriment, whites rarely did, satisfactorily addresses each
20 facet of the proper legal standard.")

21
22 The Qualitative Factors Further Support a Finding of Racially
23 Polarized Voting and a Violation of the CVRA
24

25 42. Section 14028(e) allows plaintiffs to supplement their
statistical evidence with other evidence that is "probative, but

1 not necessary [] to establish a violation" of the CVRA. That
2 section provides in relevant part that: "[a] history of
3 discrimination, the use of electoral devices or other voting
4 practices or procedures that may enhance the dilutive effects of
5 at-large elections, denial of access to those processes
6 determining which groups of candidates will receive financial or
7 other support in a given election, the extent to which members
8 of a protected class bear the effects of past discrimination in
9 areas such as education, employment, and health, which hinder
10 their ability to participate effectively in the political
11 process, and the use of overt or subtle racial appeals in
12 political campaigns." See also, Assembly Committee Analysis of
13 SB 976 (Apr. 2, 2002). These "probative, but not necessary"
14 factors further support a finding of racially polarized voting
15 in Santa Monica and a violation of the CVRA.

17 History Of Discrimination.

18 43. In Garza, supra, 756 F.Supp. at 1339-1340, the court
19 detailed how "[t]he Hispanic community in Los Angeles County has
20 borne the effects of a history of discrimination." The court
21 described the many sources of discrimination endured by Latinos
22 in Los Angeles County: "restrictive real estate covenants
23 [that] have created limited housing opportunities for the
24 Mexican-origin population"; the "repatriation" program in which
25 "many legal resident aliens and American citizens of Mexican

1 descent were forced or coerced out of the country"; segregation
2 in public schools; exclusion of Latinos from "the use of public
3 facilities" such as public swimming facilities; and "English
4 language literacy [being] a prerequisite for voting" until 1970.
5 Id. at 1340-41. Since Santa Monica is within Los Angeles
6 County, Plaintiffs do not need to re-prove this history of
7 discrimination in this case. Clinton, supra, 687 F.Supp. at
8 1317 ("We do not believe that this history of discrimination,
9 which affects the exercise of the right to vote in all elections
10 under state law, must be proved anew in each case under the
11 Voting Rights Act.")
12

13 44. Nonetheless, at trial Plaintiffs presented evidence that
14 this same sort of discrimination was perpetuated specifically
15 against Latinos in Santa Monica - e.g. restrictive real estate
16 covenants, and approximately 70% of Santa Monica voters voting
17 in favor of Proposition 14 in 1964 to repeal the Rumford Fair
18 Housing Act and therefore again allow racial discrimination in
19 housing; segregation in the use of public swimming facilities;
20 repatriation and voting restrictions applicable to all of
21 California, including Santa Monica.
22

23 //

24 //

25 //

1 The Use Of Electoral Devices Or Other Voting Practices Or
2 Procedures That May Enhance The Dilutive Effects Of At-Large
3 Elections

4 45. Defendant stresses that its elections are free of many
5 devices that dilute (or have diluted) minority votes in other
6 jurisdictions, such as numbered posts and majority vote
7 requirements. Nevertheless, the staggering of Defendant's city
8 council elections enhances the dilutive effect of its at-large
9 election system. City of Lockhart v. U.S. (1983) 460 U.S. 125,
10 135 ("The use of staggered terms also may have a discriminatory
11 effect under some circumstances, since it . . . might reduce the
12 opportunity for single-shot voting or tend to highlight
13 individual races.")

15 The Extent To Which Members Of A Protected Class Bear The
16 Effects Of Past Discrimination In Areas Such As Education,
17 Employment, And Health, Which Hinder Their Ability To
18 Participate Effectively In The Political Process.

19 46. "Courts have [generally] recognized that political
20 participation by minorities tends to be depressed where minority
21 groups suffer effects of prior discrimination such as inferior
22 education, poor employment opportunities and low incomes."
23 Garza, supra, 756 F.Supp. at 1347, citing Gingles, supra, 478
24 U.S. at 69. Where a minority group has less education and
25 wealth than the majority group, that disparity "necessarily

1 inhibits full participation in the political process" by the
2 minority. Clinton, supra, 687 F.Supp. at 1317.

3 47. As revealed by the most recent Census, Whites enjoy
4 significantly higher income levels than their Hispanic and
5 African American neighbors in Santa Monica - a difference far
6 greater than the national disparity. This is particularly
7 problematic for Latinos in Santa Monica's at-large elections
8 because of how expensive those elections have become - more than
9 one million dollars was spent in pursuit of the city council
10 seats available in 2012, for example. There is also a severe
11 achievement gap between White students and their African
12 American and Hispanic peers in Santa Monica's schools that may
13 further contribute to lingering turnout disparities.

14
15 The Use Of Overt Or Subtle Racial Appeals In Political
16 Campaigns.

17 48. In 1994, after opponents of Tony Vazquez advertised that he
18 had voted to allow "Illegal Aliens to Vote" and characterized
19 him as the leader of a Latino gang, causing Mr. Vazquez to lose
20 that election, he let his feelings be known to the Los Angeles
21 Times: "Vazquez blamed his loss on 'the racism that still
22 exists in our city. ... The racism that came out in this
23 campaign was just unbelievable.'"

24 49. More recent racial appeals, though less overt, have been
25 used to defeat other Latino candidates for Santa Monica's city

1 council. For example, when Maria Loya ran in 2004, she was
2 frequently asked whether she could represent all Santa Monica
3 residents or just "her people" - a question that non-Hispanic
4 White candidates were not asked. These sorts of racial appeals
5 are particularly caustic to minority success, because they not
6 only make it more difficult for minority candidates to win, but
7 they also discourage minority candidates from even running.

8 Lack Of Responsiveness To The Latino Community.

9
10 50. Although not listed in section 14028(e), the
11 unresponsiveness of Defendant to the needs of the Latino
12 community is a factor probative of impaired voting rights.
13 Gingles, supra, 478 U.S. at 37, 45; §14028 subd.(e) (indicating
14 that list of factors is not exhaustive - "Other factors such as
15 the history of discrimination ...") (emphasis added)). That
16 unresponsiveness is a natural, perhaps inevitable, consequence
17 of the at-large election system that tends to cause elected
18 officials to "ignore [minority] interests without fear of
19 political consequences." Gingles, supra, 478 U.S. at 48, n. 14.

20 51. The elements of the city that most residents would want to
21 put at a distance - the freeway, the trash facility, the city's
22 maintenance yard, a park that continues to emit poisonous
23 methane gas, hazardous waste collection and storage, and, most
24 recently, the train maintenance yard - have all been placed in
25 the Latino-concentrated Pico Neighborhood. Some of these

1 undesirable elements - e.g., the 10-freeway and train
2 maintenance yard - were placed in the Pico Neighborhood at the
3 direction, or with the agreement, of Defendant or members of its
4 city council.

5 52. Defendant's various commissions (planning commission, arts
6 commission, parks and recreation commission, etc.), the members
7 of which are appointed by Defendant's city council, are nearly
8 devoid of Latino members, in sharp contrast to the significant
9 proportion (16%) of Santa Monica residents who are Latino. That
10 near absence of Latinos on those commissions is important not
11 only in city planning but also for political advancement: in
12 the past 25 years there have been 2 appointments to the Santa
13 Monica City Council, and both of the appointees had served on
14 the planning commission.
15

16 The At-Large Election System Dilutes the Latino Vote in Santa
17 Monica City Council Elections.

18 53. Defendant argues that, in addition to racially polarized
19 voting, "dilution" is a separate element of a violation of the
20 CVRA. Even if "dilution" were an element of a CVRA claim,
21 separate and apart from a showing of racially polarized voting,
22 the evidence still demonstrates dilution by the standard
23 proposed by Defendant in its closing brief - "that some
24 alternative method of election would enhance Latino voting
25 power." At trial, Plaintiffs presented several available

1 remedies (district-based elections, cumulative voting, limited
2 voting and ranked choice voting), each of which would enhance
3 Latino voting power over the current at-large system.

4 54. While it is impossible to predict with certainty the
5 results of future elections, the Court considered the national,
6 state and local experiences with district elections,
7 particularly those involving districts in which the minority
8 group is not a majority of the eligible voters, other available
9 remedial systems replacing at-large elections, and the precinct-
10 level election results in past elections for Santa Monica's city
11 council. Based on that evidence, the Court finds that the
12 district map developed by Mr. Ely, and adopted by this Court as
13 an appropriate remedy, will likely be effective, improving
14 Latinos' ability to elect their preferred candidate or influence
15 the outcome of such an election.

17 The CVRA Is Not Unconstitutional

18 55. Defendant argues that the CVRA is unconstitutional,
19 pursuant to a line of cases beginning with Shaw, supra, 509 U.S.
20 630. As the court in Sanchez held, the CVRA is not
21 unconstitutional; Shaw is simply not applicable. Sanchez,
22 supra, 145 Cal.App.4th at 680-682.

23 56. Defendant's argument that the CVRA is unconstitutional
24 begins with the already-rejected notion that the CVRA is subject
25 to strict scrutiny because it employs a racial classification.

1 The court in Sanchez rejected that very argument. Sanchez,
2 supra, 145 Cal.App.4th at 680-682. Rather, although "the CVRA
3 involves race and voting, ... it does not allocate benefits or
4 burdens on the basis of race"; it is race-neutral in that it
5 neither singles out members of any one race nor advantages or
6 disadvantages members of any one race. Id. at 680.

7 Accordingly, the CVRA is not subject to strict scrutiny; it is
8 subject to the more permissive rational basis test, which the
9 Sanchez court held it easily passes. Ibid.

10 57. Defendant seems to suggest that even though the CVRA was
11 not subject to strict scrutiny in Sanchez, it must be subject to
12 strict scrutiny in Santa Monica under Shaw, because any remedy
13 in Santa Monica will inevitably be based predominantly on race.
14 But, as discussed below, the remedy selected by this Court was
15 not based predominantly on race - the district map was drawn
16 based on the non-racial criteria enumerated in Elections Code
17 section 21620. Moreover, Shaw and its progeny do not require
18 strict scrutiny every time that race is pertinent in electoral
19 proceedings. Instead, the Shaw line of cases, which focus on
20 the expressive harm to voters conveyed by particular district
21 lines, require strict scrutiny when "race was the predominant
22 factor motivating the legislature's decision to place a
23 significant number of voters within or without a particular
24 district[.]" Ala. Legislative Black Caucus v. Ala. (2015) 135
25

1 S. Ct. 1257, 1267, quoting Miller v. Johnson (1995) 515 U.S.
2 900, 916. This standard does not govern liability under the
3 CVRA, and does not govern the imposition of a remedy in the
4 abstract (e.g., whether district lines should be drawn or an
5 alternative voting system imposed), but rather it governs the
6 imposition of particular lines in particular places affecting
7 particular voters.

8 58. The CVRA is silent on how district lines must be drawn, or
9 even if districts are necessarily the appropriate remedy.

10 Sanchez, supra, 145 Cal.App.4th at 687 ("Upon a finding of
11 liability, [the CVRA] calls only for appropriate remedies, not
12 for any particular, let alone any improper, use of race.") The
13 Court is unaware of any applicable case, finding a Shaw
14 violation based on the adoption of district elections, as
15 opposed to where lines are drawn (and as explained below, the
16 appropriate remedial lines in this case were not drawn
17 predominantly based on race). That is precisely why the Sanchez
18 court rejected the City of Modesto's similar reliance on Shaw in
19 that case. Id. at 682-683.

20
21 59. The State of California has a legitimate--indeed compelling--
22 interest in preventing race discrimination in voting and in
23 particular curing demonstrated vote dilution. This interest is
24 consistent with and reflects the purposes of the California
25 Constitution as well as the Fourteenth and Fifteenth Amendments

1 to the United States Constitution. § 14027 (identifying the
2 abridgment of voting rights as the end to be prohibited); §
3 14031 (indicating that the CVRA was "enacted to implement the
4 guarantees of Section 7 of Article I and of Section 2 of Article
5 II of the California Constitution"); Cal. Const., Art. I, § 7
6 (guaranteeing, among other rights, the right to equal protection
7 of the laws); id. Art. II, § 2 (guaranteeing the right to vote);
8 Sanchez at 680 (identifying "[c]uring vote dilution" as a
9 purpose of the CVRA.) The CVRA, which provides a private right
10 of action to seek remedies for vote dilution, is rationally
11 related to the State's interest in curing vote dilution,
12 protecting the right to vote, protecting the right to equal
13 protection of the laws, and protecting the integrity of the
14 electoral process. Jauregui, supra, 226 Cal.App.4th at 799-801;
15 Sanchez, supra, 145 Cal.App.4th at 680.

16
17 60. As discussed above, Defendant's election system has
18 resulted in vote dilution - the very injury that the CVRA is
19 intended to prevent and remedy - and, though not required by the
20 CVRA, the evidence explored below even indicates that the
21 dilution remedied in this case was the product of intentional
22 discrimination. And, as discussed below, there are several
23 remedial options to effectively remedy that vote dilution in
24 this case. Accordingly, the CVRA is constitutional and easily
25

1 satisfies the rational basis test, on its face and in its
2 specific application to Defendant.

3 61. Even if strict scrutiny were found to apply to the CVRA,
4 the CVRA is narrowly tailored to achieve a compelling state
5 interest and therefore also satisfies that test. First,
6 California has compelling interests in protecting all of its
7 citizens' rights to vote and to participate equally in the
8 political process, protecting the integrity of the electoral
9 process, and in ensuring that its laws and those of its
10 subdivisions do not result in vote dilution in violation of its
11 robust commitment to equal protection of the laws. Cal. Const.,
12 Art. I, § 7, Art. II, § 2; Elec. Code §§ 14027, 14031; Jauregui,
13 supra, 226 Cal.App.4th at 799-801; Sanchez, supra, 145
14 Cal.App.4th at 680.

15 62. Second, the CVRA is narrowly tailored to achieve its
16 compelling interests in preventing the abridgment of the right
17 to vote. The CVRA requires a person to demonstrate the
18 existence of racially polarized voting to prove a violation. §
19 14028 subd. (a). Where racially polarized voting does not
20 exist, the CVRA will not require a remedy. As with the FVRA,
21 both the findings of liability and the establishment of a remedy
22 under the CVRA do not rely on assumptions about race, but rather
23 on factual patterns specific to particular communities in
24 particular geographic regions, based on electoral evidence.
25

1 Compare, Shaw, supra, 509 U.S. at 647-648 (unconstitutional
2 racial gerrymandering is based on the assumption that "members
3 of the same racial group—regardless of their age, education,
4 economic status, or the community in which they live—think
5 alike, share the same political interests, and will prefer the
6 same candidates at the polls") with id. at 653 (distinguishing
7 the Voting Rights Act, in which "racial bloc voting and
8 minority-group political cohesion never can be assumed, but
9 specifically must be proved in each case" based on evidence of
10 group voting behavior.) And though federal cases have not
11 considered the CVRA specifically in this regard, the Supreme
12 Court has repeatedly implied that remedies narrowly drawn to
13 combat racially polarized voting and discriminatory vote
14 dilution will survive strict scrutiny.¹⁰ As a result, the CVRA
15 sweeps no wider than necessary to equitably secure for
16 Californians their rights to vote and to participate in the
17 political process. Jauregui, supra, 226 Cal.App.4th at 802.

20
21 ¹⁰ League of United Latin Am. Citizens v. Perry (2006) 548 U.S. 399, 475, n.12
22 (Stevens, J., joined by Breyer, J., concurring in part and dissenting in
23 part); id. at 518-519 (Scalia, J., joined by Thomas, J., Alito, J., and
24 Roberts, C.J., concurring in the judgment in part and dissenting in part);
25 Bush v. Vera (1996) 517 U.S. 952, 990, 994 (O'Connor, J., concurring); Shaw,
supra, 509 U.S. at 653-54. Indeed, just last year, in Bethune-Hill v. Va.
State Bd. of Elections (2017) 137 S. Ct. 788, the Supreme Court upheld a
Virginia state Senate district against challenge on the theory that it was
predominantly driven by race, but in a manner designed to meet strict
scrutiny through compliance with the Voting Rights Act. Id. at 802. Neither
party contested that compliance with the Voting Rights Act would satisfy
strict scrutiny, but the Court does not usually permit the litigants to
concede the justification for its most exacting level of scrutiny.

1 And if the CVRA generally satisfies strict scrutiny, it
2 satisfies strict scrutiny in application here, where as
3 described below, the dilution remedied was proven to be the
4 product of intentional discrimination.

5 **THE EQUAL PROTECTION CLAUSE OF THE CALIFORNIA CONSTITUTION**

6 63. Article I, section 7 of the California Constitution mirrors
7 the Equal Protection Clause of the U.S. Constitution (Fourteenth
8 Amendment).¹¹ Where governmental actions or omissions are
9 motivated by a racially discriminatory purpose they violate the
10 Equal Protection Clause, and when voting rights are implicated,
11 "[t]he Supreme Court has established that official actions
12 motivated by discriminatory intent 'have no legitimacy at all .
13 . . . ' N.C. State Conference NAACP v. McCrory (4th Cir. 2016)
14 831 F.3d 204, 239 (surveying Supreme Court cases); see also
15 generally Garza v. County of Los Angeles (9th Cir. 1990) 918 F.2d
16 763, cert. denied (1991) 111 S.Ct. 681. Neither the passage of
17 time, nor the modification of the original enactment, can save a
18 provision enacted with discriminatory intent. Id.; Hunter v.
19 Underwood (1985) 471 U.S. 222 (invalidating a provision of the
20 1901 Alabama Constitution because it was motivated by a desire
21 to disenfranchise African Americans, even though its "more
22 blatantly discriminatory" portions had since been removed.)
23
24

25 ¹¹ Other than provisions relating exclusively to school integration, Article I
section 7 provides "A person may not be deprived of life, liberty, or
property without due process of law or denied equal protection of the laws."

1 64. "Determining whether invidious discriminatory purpose was a
2 motivating factor demands a sensitive inquiry into such
3 circumstantial and direct evidence of intent as may be
4 available. ... [including] the historical background of the
5 decision." Village of Arlington Heights v. Metro. Housing Dev.
6 Corp. (1977) 429 U.S. 252, 266-68. Sometimes, racially
7 discriminatory intent can be demonstrated by the clear
8 statements of one or more decision makers. But, recognizing
9 that these "smoking gun" admissions of racially discriminatory
10 intent are exceedingly rare, in Arlington Heights, the U.S.
11 Supreme Court described a number of potential, non-exhaustive,
12 sources of evidence that might shed light on the question of
13 discriminatory intent in the absence of a smoking gun admission:
14

15 The impact of the official action -- whether it bears
16 more heavily on one race than another, may provide an
17 important starting point. Sometimes a clear pattern,
18 unexplainable on grounds other than race, emerges from
19 the effect of the state action even when the governing
20 legislation appears neutral on its face. The
21 evidentiary inquiry is then relatively easy. But such
22 cases are rare. Absent a pattern as stark as that in
23 Gomillion or Yick Wo, impact alone is not
24 determinative, and the Court must look to other
25 evidence. The historical background of the decision

1 is one evidentiary source, particularly if it reveals
2 a series of official actions taken for invidious
3 purposes. The specific sequence of events leading up
4 to the challenged decision also may shed some light on
5 the decision maker's purposes. ... Departures from the
6 normal procedural sequence also might afford evidence
7 that improper purposes are playing a role.
8 Substantive departures too may be relevant,
9 particularly if the factors usually considered
10 important by the decision maker strongly favor a
11 decision contrary to the one reached. The legislative
12 or administrative history may be highly relevant,
13 especially where there are contemporary statements by
14 members of the decision-making body, minutes of its
15 meetings, or reports. In some extraordinary
16 instances, the members might be called to the stand at
17 trial to testify concerning the purpose of the
18 official action, although even then such testimony
19 frequently will be barred by privilege. The foregoing
20 summary identifies, without purporting to be
21 exhaustive, subjects of proper inquiry in determining
22 whether racially discriminatory intent existed.

23
24 Id. at 266-268 (citations omitted). "[P]laintiffs are not
25 required to show that [discriminatory] intent was the sole

1 purpose of the [challenged government decision]," or even the
2 "primary purpose," just that it was "a purpose." Brown v. Board
3 of Com'rs of Chattanooga, Tenn. (E.D. Tenn. 1989) 722 F. Supp.
4 380, 389, citing Arlington Heights at 265 and Bolden v. City of
5 Mobile (S.D. Ala. 1982) 543 F. Supp. 1050, 1072.

6 Defendant's At-Large Election System Violates The Equal
7 Protection Clause Of The California Constitution.

8 65. Defendant's at-large election system was adopted and/or
9 maintained with a discriminatory intent on at least two
10 occasions - in 1946 and in 1992, *either* of which necessitates
11 this Court invalidating the at-large election system. Hunter v.
12 Underwood (1985) 471 U.S. 222 (invalidating a provision of the
13 1901 Alabama Constitution because it was motivated by a desire
14 to disenfranchise African Americans, even though its "more
15 blatantly discriminatory" portions had since been removed);
16 Brown, supra 722 F. Supp. at 389 (striking at-large election
17 system based on discriminatory intent in 1911 even absent
18 discriminatory intent in maintaining that system in decisions of
19 1957, the late 1960s and early 1970s). In the early 1990s, the
20 Charter Review Commission, impaneled by Defendant's city
21 council, concluded that "a shift from the at-large plurality
22 system currently in use" was necessary "to distribute
23 empowerment more broadly in Santa Monica, particularly to ethnic
24 groups ..." Even back in 1946, it was understood that at-large
25

1 elections would "starve out minority groups," leaving "the
2 Jewish, colored [and] Mexican [no place to] go for aid in his
3 special problems" "with seven councilmen elected AT-LARGE ...
4 mostly originat[ing] from [the wealthy White neighborhood] North
5 of Montana [and] without regard [for] minorities." Yet, in each
6 instance Defendant chose at-large elections.

7
8 1946

9 66. Defendant's current at-large election system has a long
10 history that has its roots in 1946. In 1946, Defendant adopted
11 its current council-manager form of government, and chose an at-
12 large elected city council and school board. The at-large
13 election feature remains in Defendant's city charter. Santa
14 Monica Charter § 600 ("The City Council shall consist of seven
15 members elected from the City at large ..."), § 900. As Dr.
16 Kousser's testimony at trial and his report to the Santa Monica
17 Charter Review Committee in 1992 explained, proponents and
18 opponents of the at-large system alike, bluntly recognized that
19 the at-large system would impair minority representation. And,
20 another ballot measure involving a pure racial issue was on the
21 ballot at the same time in 1946 - Proposition 11, which sought
22 to ban racial discrimination in employment. Dr. Kousser's
23 statistical analysis shows a strong correlation between voting
24 in favor of the at-large charter provision and against the
25 contemporaneous Proposition 11, further demonstrating the

1 understanding that at-large elections would prevent minority
2 representation.

3 67. When the Arlington Heights factors are each considered,
4 those non-exhaustive factors militate in favor of finding
5 discriminatory intent in the 1946 adoption of the current at
6 large election system. The discriminatory impact of the at-
7 large election system was felt immediately after its adoption in
8 1946. Though several ran, no candidates of color were elected
9 to the Santa Monica City Council in the 1940s, 50s or 60s.

10 Bolden v. City of Mobile (S.D. Ala. 1982) 542 F.Supp. 1070, 1076
11 (relying on the lack of success of Black candidates over several
12 decades to show disparate impact, even without a showing that
13 Black voters voted for each of the particular Black candidates
14 going back to 1874.) Moreover, the impact on the minority-
15 concentrated Pico Neighborhood over the past 72 years, discussed
16 above, also demonstrates the discriminatory impact of the at-
17 large election system in this case. Gingles 478 U.S. at 48, n.
18 14 (describing how at-large election systems tend to cause
19 elected officials to "ignore [minority] interests without fear
20 of political consequences.")

21
22 68. The historical background of the decision in 1946 also
23 weighs in favor of a finding of discriminatory intent. At-large
24 elections were known to disadvantage minorities, and that was
25 understood in Santa Monica in 1946. The non-White population in

1 Santa Monica was growing at a faster rate than the White
2 population - enough that the chief newspaper in Santa Monica,
3 the Evening Outlook, was alarmed by the rate of increase in the
4 non-white population. The fifteen Freeholders, who proposed
5 only at-large elections to the Santa Monica electorate in 1946,
6 were all White, and all but one lived on the wealthier, Whiter
7 side of Wilshire Boulevard. At-large elections were, therefore,
8 in their self-interest, and at least three of the Freeholders
9 successfully ran for seats on the city council in the years that
10 followed.
11

12 69. The Santa Monica commissioners had adopted a resolution
13 calling for all Japanese Americans to be deported to Japan
14 rather than being allowed to return to their homes after being
15 interned, Los Angeles County had been marred by the zoot suit
16 riots, and racial tensions were prevalent enough in Santa Monica
17 that a Committee on Interracial Progress was necessary.
18 However, Defendants correctly point out (in their Objections to
19 Plaintiff's proposed statement of decision) that some members of
20 the Committee on Interracial Progress supported the 1946 Santa
21 Monica charter amendment and that none signed onto
22 advertisements opposing it. Indeed, minority leaders, including
23 one the city's most prominent African Americans, Rev. W.P.
24 Carter, endorsed the charter.
25

1 70. The Court has weighed the historical evidence, including
2 the endorsement of the charter amendment by some minority
3 leaders, and the Court finds that the evidence of discriminatory
4 intent outweighs the contrary evidence. The Court draws the
5 inferences that the creation of the Committee on Interracial
6 Progress was an acknowledgment of racial tension, that those
7 members were aware that the election of minority candidates was
8 an issue with the charter amendment, and that the members of the
9 Committee on Interracial Progress were hopeful that the charter
10 amendment (which increased the governing body from three to
11 seven, among other things) would increase the number of
12 minorities elected to the governing body. The charter amendment
13 was approved and, despite the hopefulness, did not result in the
14 election of minorities for decades.

16 71. At the same time as the 1946 Santa Monica charter amendment
17 was approved, a significant majority of Santa Monica voters
18 voted against Proposition 11, which would have outlawed racial
19 discrimination in employment, and Dr. Kousser's EI analysis
20 shows a very strong correlation between voting for the charter
21 amendment and against Proposition 11.

22 72. The sequence of events leading up to the adoption of the
23 at-large system in 1946 likewise supports a finding of
24 discriminatory intent. As Dr. Kousser detailed, in 1946, the
25 Freeholders waffled between giving voters a choice of having

1 some district elections or just at-large elections, and
2 ultimately chose to only present an at-large election option
3 despite the recognition that district elections would be better
4 for minority representation.

5 73. The substantive and procedural departures from the norm
6 also support a finding of discriminatory intent. In 1946, the
7 Freeholders' reversed course on offering to the voters a hybrid
8 system (some district, and some at-large, elected council seats)
9 in the wake of discussion of minority representation, and, after
10 a series of votes the local newspaper called "unexpected,"
11 offered the voters only the option of at-large elections.

12 74. The legislative and administrative history in 1946 is
13 difficult to discern. There appears to have been no report of
14 the Freeholders' discussions, but the statements by proponents
15 and opponents of the charter amendment demonstrate that all
16 understood that at-large elections would diminish minorities'
17 influence on elections.

18
19 1992

20 75. After winning a FVRA case ending at-large elections in
21 Watsonville in 1989, Joaquin Avila (later principally involved
22 in drafting the CVRA) and other attorneys began to file and
23 threaten to file lawsuits challenging at-large elections
24 throughout California on the grounds that they discriminated
25 against Latinos. The Santa Monica Citizens United to Reform

1 Elections (CURE) specifically noted the Watsonville case in
2 urging the Santa Monica City Council to place the issue of
3 substituting district for at-large elections on the ballot,
4 allowing Santa Monica voters to decide the question. With the
5 issue of at-large elections diluting minority vote receiving
6 increased attention in Santa Monica and throughout California,
7 Defendant appointed a 15-member Charter Review Commission to
8 study the matter and make recommendations to the City Council.
9
10 76. As part of their investigation, the Charter Review
11 Commission sought the analysis of Plaintiff's expert, Dr.
12 Kousser, who had just completed his work in Garza regarding
13 discriminatory intent in the way Los Angeles County's
14 supervisorial districts had been drawn. Dr. Kousser was asked
15 whether Santa Monica's at-large election system was adopted or
16 maintained for a discriminatory purpose, and Dr. Kousser
17 concluded that it was, for all of the reasons discussed above.
18 Based on their extensive study and investigations, the near-
19 unanimous Charter Review Commission recommended that Defendant's
20 at-large election system be eliminated. The principal reason
21 for that recommendation was that the at-large system prevents
22 minorities and the minority-concentrated Pico Neighborhood from
23 having a seat at the table.
24
25 77. That recommendation went to the City Council in July 1992,
and was the subject of a public city council meeting. Excerpts

1 from the video of that hours-long meeting were played at trial,
2 and provide direct evidence of the intent of the then-members of
3 Defendant's City Council. One speaker after another - members
4 of the Charter Review Commission, the public, an attorney from
5 the Mexican American Legal Defense and Education Fund, and even
6 a former councilmember - urged Defendant's City Council to
7 change its at-large election system. Many of the speakers
8 specifically stressed that the at-large system discriminated
9 against Latino voters and/or that courts might rule that they
10 did in an appropriate case. Though the City Council understood
11 well that the at-large system prevented racial minorities from
12 achieving representation - that point was made by the Charter
13 Review Commission's report and several speakers and was never
14 challenged - the members refused by a 4-3 vote to allow the
15 voters to change the system that had elected them.

17 78. Councilmember Dennis Zane explained his professed
18 reasoning: in a district system, Santa Monica would no longer
19 be able to place a disproportionate share of affordable housing
20 into the minority-concentrated Pico Neighborhood, where,
21 according to the unrefuted remarks at the July 1992 council
22 meeting, the majority of the city's affordable housing was
23 already located, because the Pico Neighborhood district's
24 representative would oppose it. Mr. Zane's comments were candid
25 and revealing. He specifically phrased the issue as one of

1 Latino representation versus affordable housing: "So you gain
2 the representation but you lose the housing."¹² While this
3 professed rationale could be characterized as not demonstrating
4 that Mr. Zane or his colleagues "harbored any ethnic or racial
5 animus toward the . . . Hispanic community," it nonetheless
6 reflects intentional discrimination—Mr. Zane understood that his
7 action would harm Latinos' voting power, and he took that action
8 to maintain the power of his political group to continue dumping
9 affordable housing in the Latino-concentrated neighborhood
10 despite their opposition. Garza, supra, 918 F.2d at 778 (J.
11 Kozinski, concurring) (finding that incumbents preserving their
12 power by drawing district lines that avoided a higher proportion
13 of Latinos in one district was *intentionally discriminatory*
14 *despite the lack of any racial animus*), cert. denied (1991) 111
15 S.Ct. 681.

17 79. In addition to Mr. Zane's contemporaneous explanation of
18 his own decisive vote, the Court also considers the
19 circumstantial evidence of intent revealed by the Arlington
20 Heights factors. While those non-exhaustive factors do not each
21

22 ¹² Mr. Zane's insistence on a tradeoff between Latino representation and
23 policy goals that he believed would be more likely to be accomplished by an
24 at-large council echoed comments of the *Santa Monica Evening Outlook*, the
25 chief sponsor of and spokesman for the charter change to an at-large city
council in 1946. "[G]roups such as organized labor and the colored people,"
the newspaper announced, should realize that "The interest of minorities is
always best protected by a system which favors the election of liberal-minded
persons who are not compelled to play peanut politics. Such liberal-minded
persons, of high caliber, will run for office and be elected if elections are
held at large."

1 reveal discrimination to the same extent, on balance, they also
2 militate in favor of finding discriminatory intent in this case.
3 The discriminatory impact of the at-large election system was
4 felt immediately after its maintenance in 1992. The first and
5 only Latino elected to the Santa Monica City Council lost his
6 re-election bid in 1994 in an election marred by racial appeals
7 - a notable anomaly in Santa Monica where election records
8 establish that incumbents lose very rarely. Bolden v. City of
9 Mobile (S.D. Ala. 1982) 542 F.Supp. 1050, 1076 (relying on the
10 lack of success of Black candidates over several decades to show
11 disparate impact, even without a showing that Black voters voted
12 for each of the particular Black candidates going back to 1874.)
13 Moreover, the impact on the minority-concentrated Pico
14 Neighborhood over the past 72 years, discussed above, also
15 demonstrates the discriminatory impact of the at-large election
16 system in this case, and has continued well past 1992. Gingles,
17 supra, 478 U.S. at 48, n. 14 (describing how at-large election
18 systems tend to cause elected officials to "ignore [minority]
19 interests without fear of political consequences.")
20
21 80. The historical background of the decision in 1992 also
22 militate in favor of finding a discriminatory intent. At-large
23 elections are well known to disadvantage minorities, and that
24 was well understood in Santa Monica in 1992. In 1992, the non-
25 White population was sufficiently compact (in the Pico

1 Neighborhood) that Dr. Leo Estrada concluded that a council
2 district could be drawn with a combined majority of Latino and
3 African American residents. While the Santa Monica City Council
4 of the late 1980s and early 1990s was sometimes supportive of
5 policies and programs that benefited racial minorities, as
6 pointed out by Defendant's expert, Dr. Lichtman, the members
7 also supported a curfew that Santa Monica's lone Latino council
8 member described as "institutional racism," as pointed out by
9 Dr. Kousser, and they understood that district elections would
10 undermine the slate politics that had facilitated the election
11 of many of them.
12

13 81. The sequence of events leading up to the maintenance of the
14 at-large system in 1992, likewise supports a finding of
15 discriminatory intent. In 1992, the Charter Review Commission,
16 and the CURE group before that, intertwined the issue of
17 district elections with racial justice, and the connection was
18 clear from the video of the July 1992 city council meeting,
19 immediately prior to Defendant's city council voting to prevent
20 Santa Monica voters from adopting district elections.

21 82. The substantive and procedural departures from the norm
22 also support a finding of discriminatory intent. In 1992, the
23 Charter Review Commission recommended scrapping the at-large
24 election system, principally because of its deleterious effect
25 on minority representation. While Defendant's City Council

1 adopted nearly all of the Charter Review Commission's
2 recommendations, it refused to adopt any change to the at-large
3 elections or even submit the issue to the voters.

4 83. Finally, as discussed above, the legislative and
5 administrative history in 1992, specifically the Charter Review
6 Commission report and the video of the July 1992 city council
7 meeting, demonstrates a deliberate decision to maintain the
8 existing at-large election structure because of, and not merely
9 despite, the at-large system's impact on Santa Monica's minority
10 population.
11

12 REMEDIES

13 84. Having found that Defendant's election system violates the
14 CVRA and the Equal Protection Clause, the Court must implement a
15 remedy to cure those violations. The CVRA specifies that the
16 implementation of appropriate remedies is mandatory.

17 85. "Upon a finding of a violation of Section 14027 and Section
18 14028, the court shall implement appropriate remedies, including
19 the imposition of district-based elections, that are tailored to
20 remedy the violation." Elec. Code § 14029. The federal courts
21 in FVRA cases have similarly and unequivocally held that once a
22 violation is found, a remedy must be adopted. Williams v.
23 Texarkana, Ark. (8th Cir. 1994) 32 F.3d 1265, 1268 (Once a
24 violation of the FVRA is found, "[i]f [the] appropriate
25 legislative body does not propose a remedy, the district court

1 must fashion a remedial plan"); Bone Shirt, supra, 387 F.Supp.2d
2 at 1038 (same); Reynolds v. Sims (1964) 377 U.S. 533, 585
3 ("[O]nce a State's legislative apportionment scheme has been
4 found to be unconstitutional, it would be the unusual case in
5 which a court would be justified in not taking appropriate
6 action to insure that no further elections are conducted under
7 the invalid plan.") Likewise, in regards to an Equal Protection
8 violation implicating voting rights, "[t]he Supreme Court has
9 established that official actions motivated by discriminatory
10 intent 'have no legitimacy at all' Thus, the proper
11 remedy for a legal provision enacted with discriminatory intent
12 is invalidation." McCrory, supra, 831 F.3d at 239 (surveying
13 Supreme Court cases.)

15 86. Once liability is established under the CVRA, the Court has
16 a broad range of remedies from which to choose. § 14029 ("Upon
17 a finding of a violation of Section 14027 and Section 14028, the
18 court shall implement appropriate remedies, including the
19 imposition of district-based elections, that are tailored to
20 remedy the violation."); Sanchez, supra, 145 Cal.App.4th at 670.
21 The range of remedies from which the Court may choose is at
22 least as broad as those remedies that have been adopted in FVRA
23 cases. Jauregui, supra, 226 Cal.App.4th at 807 ("Thus, the
24 Legislature intended to expand the protections against vote
25 dilution provided by the federal Voting Rights Act of 1965. It

1 would be inconsistent with the evident legislative intent to
2 expand protections against vote dilution to narrowly limit the
3 scope of . . . relief as defendant asserts. Logically, the
4 appropriate remedies language in section 14029 extends to . . .
5 orders of the type approved under the federal Voting Rights Act
6 of 1965.") Thus, the range of remedies available to the Court
7 includes not only the imposition of district-based elections per
8 § 14029, but also, for example, less common at-large remedies
9 imposed in FVRA cases such as cumulative voting, limited voting
10 and untagged elections. U.S. v. Village of Port Chester
11 (S.D.N.Y. 2010) 704 F.Supp.2d 411 (ordering cumulative voting
12 and untagging elections); U.S. v. City of Euclid (N.D. Ohio
13 2008) 580 F.Supp.2d 584 (ordering limited voting). The Court
14 may also order a special election. Neal v. Harris (4th Cir.
15 1987) 837 F.2d 632, 634 (affirming trial court's order requiring
16 a special election, during the terms of the members elected
17 under the at-large system, rather than awaiting the date of the
18 next regularly scheduled election, when their terms would have
19 expired.); Ketchum v. City Council of Chicago (N.D Ill. 1985)
20 630 F.Supp. 551, 564-566 (ordering special elections to replace
21 aldermen elected under a system that violated the FVRA); Bell v.
22 Southwell (5th. Cir. 1967) 376 F.2d 659, 665 (voiding an
23 unlawful election, prohibiting the winner of that unlawful
24 election from taking office, and ordering that a special
25

election be held promptly); Coalition for Education in District One v. Board of Elections (S.D.N.Y. 1974) 370 F.Supp. 42, 58, aff'd (2nd Cir. 1974) 495 F.2d 1090; Tucker v. Burford (N.D. Miss. 1985) 603 F.Supp. 276, 279; Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany (2d Cir. 2004) 357 F.3d 260, 262-263 (applauding the district court for ordering a special election.) Indeed, courts have even used their remedial authority to remove all members of a city council where necessary. Bell v. Southwell (5th Cir. 1967) 367 F.2d 659, 665; Williams v. City of Texarkana (W.D. Ark. 1993) 861 F.Supp. 771, aff'd (8th Cir. 1994) 32 F.3d 1265; Hellebust v. Brownback (10th Cir. 1994) 42 F.3d 1331).

87. The broad remedial authority granted to the Court by Section 14029 of the CVRA extends to remedies that are inconsistent with a city charter, Jauregui at 794-804, and even remedies that would otherwise be inconsistent with state laws enacted prior to the CVRA. Id. at 804-808 (affirming the trial court's injunction, pursuant to section 14029 of the CVRA, prohibiting the City of Palmdale from certifying its at-large election results despite that injunction being inconsistent with Code of Civil Procedure section 526(b)(4) and Civil Code section 3423(d)). Likewise, because the California Constitution is supreme over state statutes, any remedy for Defendant's violation of the Equal Protection Clause is unimpeded by

1 administrative state statutes. Am. Acad. of Pediatrics v.
2 Lungren (1997) 16 Cal.4th 307 (invalidating a state statute
3 because it impinged upon rights guaranteed by the California
4 Constitution). Voting rights are the most fundamental in our
5 democratic system; when those rights have been violated, the
6 Court has the obligation to ensure that the remedy is up to the
7 task.

8 88. Any remedial plan should fully remedy the violation.

9 Dillard v. Crenshaw Cnty., Ala. (11th Cir. 1987) 831 F.2d 246,
10 250 ("The court should exercise its traditional equitable powers
11 to fashion the relief so that it completely remedies the prior
12 dilution of minority voting strength and fully provides equal
13 opportunity for minority citizens to participate and to elect
14 candidates of their choice. ... This Court cannot authorize an
15 element of an election proposal that will not with certitude
16 completely remedy the [] violation."); Harvell v. Blytheville
17 Sch. Dist. No. 5 (8th Cir. 1997) 126 F.3d 1038, 1040 (affirming
18 trial court's rejection of defendant's plan because it would not
19 "completely remedy the violation"; LULAC Council No. 4836 v.
20 Midland Indep. Sch. Dist. (W.D. Tex. 1986) 648 F.Supp. 596, 609;
21 United States v. Osceola Cnty., Fla. (M.D. Fla. 2006) 474
22 F.Supp.2d 1254, 1256. The United States Supreme Court has
23 explained that the court's duty is to both remedy past harm and
24 prevent future violations of minority voting rights: "[T]he
25

1 court has not merely the power, but the duty, to render a decree
2 which will, so far as possible, eliminate the discriminatory
3 effects of the past as well as bar like discrimination in the
4 future." Louisiana v. United States (1965) 380 U.S. 145, 154;
5 Buchanan v. City of Jackson, Tenn., (W.D. Tenn. 1988) 683 F.
6 Supp. 1537, 1541 (same, rejecting defendant's hybrid at-large
7 remedial plan.)

8
9 89. The remedy for a violation of the Equal Protection Clause
10 should likewise be prompt and complete. Courts have
11 consistently held that intentional racial discrimination is so
12 caustic to our system of government that once intentional
13 discrimination is shown, "the 'racial discrimination must be
14 eliminated root and branch'" by "a remedy that will fully
15 correct past wrongs." N. Carolina NAACP v. McCrory (4th Cir.
16 2016) 831 F.3d 204, 239, quoting Green v. Cty. Sch. Bd. (1968)
17 391 U.S. 430, 437-439, Smith v. Town of Clarkton (4th Cir. 1982)
18 682 F.2d 1055, 1068.)

19 90. It is also imperative that once a violation of voting
20 rights is found, remedies be implemented promptly, lest minority
21 residents continue to be deprived of their fair representation.
22 Williams v. City of Dallas (N.D. Tex. 1990) 734 F.Supp. 1317
23 (*"In no way will this Court tell African-Americans and Hispanics*
24 *that they must wait any longer for their voting rights in the*
25 *City of Dallas."*) (emphasis in original).

1 91. Though other remedies, such as cumulative voting, limited
2 voting and ranked choice voting, are possible options in a CVRA
3 action and would improve Latino voting power in Santa Monica,
4 the Court finds that, given the local context in this case -
5 including socioeconomic and electoral patterns, the voting
6 experience of the local population, and the election
7 administration practicalities present here - a district-based
8 remedy is preferable. The choice of a district-based remedy is
9 also consistent with the overwhelming majority of CVRA and FVRA
10 cases.
11

12 92. At trial, only one district plan was presented to the Court
13 - Trial Exhibit 261. That plan was developed by David Ely,
14 following the criteria mandated by Section 21620 of the
15 Elections Code, applicable to charter cities. The populations
16 of the proposed districts are all within 10% of one another;
17 areas with similar demographics (e.g. socio-economic status) are
18 grouped together where possible and the historic neighborhoods
19 of Santa Monica are intact to the extent possible; natural
20 boundaries such as main roads and existing precinct boundaries
21 are used to divide the districts where possible; and neither
22 race nor the residences of incumbents was a predominant factor
23 in drawing any of the districts.
24

25 93. Trial testimony revealed that jurisdictions that have
switched from at-large elections to district elections as a

1 result of CVRA cases have experienced a pronounced increase in
2 minority electoral power, including Latino representation. Even
3 in districts where the minority group is one-third or less of a
4 district's electorate, minority candidates previously
5 unsuccessful in at-large elections have won district elections.
6 Florence Adams, *Latinos and Local Representation: Changing*
7 *Realities, Emerging Theories* (2000), at 49-61.

8
9 94. The particular demographics and electoral experiences of
10 Santa Monica suggest that the seven-district plan would
11 similarly result in the increased ability of the minority
12 population to elect candidates of their choice or influence the
13 outcomes of elections. Mr. Ely's analysis of various elections
14 shows that the Latino candidates preferred by Latino voters
15 perform much better in the Pico Neighborhood district of Mr.
16 Ely's plan than they do in other parts of the city - while they
17 lose citywide, they often receive the most votes in the Pico
18 Neighborhood district. The Latino proportion of eligible voters
19 is much greater in the Pico Neighborhood district than the city
20 as a whole. In contrast to 13.64% of the citizen-voting-age-
21 population in the city as a whole, Latinos comprise 30% of the
22 citizen-voting-age-population in the Pico Neighborhood district.
23 That portion of the population and citizen-voting-age-population
24 falls squarely within the range the U.S. Supreme Court deems to
25 be an influence district. Georgia v. Ashcroft (2003) 539 U.S.

1 461, 470-471, 482 (evaluating the impact of "influence
2 districts," defined as districts with a minority electorate "of
3 between 25% and 50%.") Testimony established that Latinos in
4 the Pico Neighborhood are politically organized in a manner that
5 would more likely translate to equitable electoral strength.
6 Testimony also established that districts tend to reduce the
7 campaign effects of wealth disparities between the majority and
8 minority communities, which are pronounced in Santa Monica.
9

10 95. Though given the opportunity to do so, Defendant did not
11 propose a remedy. The six-week trial of this case was not
12 bifurcated between liability and remedies. Though Plaintiffs
13 presented potential remedies at trial, Defendant did not propose
14 any remedy at all in the event that the Court found in favor of
15 Plaintiffs. On November 8, 2018, the Court gave Defendant
16 another opportunity, ordering the parties to file briefs and
17 attend a hearing on December 7, 2018 "regarding the
18 appropriate/preferred remedy for violation of the [CVRA]."¹³
19
20

21 ¹³ The schedule set by this Court on November 8, 2018 is in line with what
22 other courts have afforded defendants to propose a remedy following a
23 determination that voting rights have been violated. Williams v. City of
24 Texarkana (W.D. Ark. 1992) 861 F.Supp. 756, 767 (requiring the defendant to
25 submit its proposed remedy 16 days after finding Texarkana's at-large
elections violated the FVRA), aff'd (8th Cir. 1994) 32 F.3d 1265; Larios v.
Cox (N.D. Ga. 2004) 300 F.Supp.2d 1320, 1356-1357 (requiring the Georgia
legislature to propose a satisfactory apportionment plan and seek Section 5
preclearance from the U.S. Attorney General within 19 days); Jauregui v. City
of Palmdale, No. BC483039, 2013 WL 7018376 (Aug. 27, 2013) (scheduling
remedies hearing for 24 days after the court mailed its decision finding a
violation of the CVRA).

1 Still, Defendant did not propose a remedy, other than to say
2 that it prefers the implementation of district-based elections
3 over the less-common at-large remedies discussed at trial.
4 Where a defendant fails to propose a remedy to a voting rights
5 violation on the schedule directed by the court, the court must
6 provide a remedy without the defendant's input. Williams v.
7 City of Texarkana (8th Cir. 1994) 32 F.3d 1265, 1268 ("If [the]
8 appropriate legislative body does not propose a remedy, the
9 district court must fashion a remedial plan."); Bone Shirt v.
10 Hazeltine (D.S.D. 2005) 387 F.Supp.2d 1035, 1038 (same).
11
12 96. Defendant argues that section 10010 of the Elections Code
13 constrains the Court's ability to adopt a district plan without
14 holding a series of public hearings. On the contrary, section
15 10010 speaks to what a *political subdivision* must do (e.g. a
16 series of public hearings) in order to adopt district elections
17 or propose a legislative plan remedy in a CVRA case, not what a
18 court must do in completing its responsibility under section
19 14029 of the Elections Code to implement appropriate remedies
20 tailored to remedy the violation. Defendant could have
21 completed the process specified in section 10010 at any time in
22 the course of this case, which has been pending for nearly 3
23 years. Even if Defendant had started the process of drawing
24 districts only upon receiving this Court's November 8 Order (on
25 November 13), it could have held the initial public meetings

1 required by section 10010(a)(1) by November 19, and the
2 additional public meetings the week of November 26, completing
3 the process in advance of its November 30 remedies brief. To
4 the Court's knowledge, even at the time of the present statement
5 of decision, Defendant has failed to begin any remedial process
6 of its own.

7
8 97. In order to eliminate the taint of the illegal at-large
9 election system in this case, in a prompt and orderly manner, a
10 special election for all seven council seats is appropriate.
11 Other courts have similarly held that a special election is
12 appropriate, where an election system is found to violate the
13 FVRA. Neal, supra, 837 F.2d at 632-634 ("[o]nce it was
14 determined that plaintiffs were entitled to relief under section
15 2, ... the timing of that relief was a matter within the
16 discretion of the court."); Ketchum, supra, 630 F.Supp. at 564-
17 566; Bell v. Southwell (5th. Cir. 1967) 376 F.2d 659, 665
18 (voiding an unlawful election, prohibiting the winner of that
19 unlawful election from taking office, and ordering that a
20 special election be held promptly); Coalition for Ed. in Dist.
21 One v. Board of Elections of City of N.Y. (S.D.N.Y. 1974) 370
22 F.Supp. 42, 58, aff'd (2nd Cir. 1974) 495 F.2d 1090; Tucker v.
23 Burford (N.D. Miss. 1985) 603 F.Supp. 276, 279; Arbor Hill
24 Concerned Citizens v. Cnty. of Albany (2d Cir. 2004) 357 F.3d
25 260, 262-63 (applauding the district court for ordering a

1 special election); Montes v. City of Yakima (E.D. Wash. 2015)
2 2015 WL 11120964, at p. 11, (explaining that a special election
3 is often necessary to completely eliminate the stain of illegal
4 elections). As the Second District Court of Appeal held in
5 Jauregui, "the appropriate remedies language in section 14029
6 extends to [remedial] orders of the type approved under the
7 federal Voting Rights Act of 1965," Jauregui, supra, 226
8 Cal.App.4th at 807, so the logic of the courts for ordering
9 special elections in all of these cases is equally applicable in
10 this case.
11

12 98. From the beginning of the nomination period to election
13 day, takes a little less than four months.

14 [https://www.smvote.org/uploadedFiles/SMVote/2016\(1\)/Election%20C](https://www.smvote.org/uploadedFiles/SMVote/2016(1)/Election%20Calendar_website.pdf)
15 [alendar_website.pdf](https://www.smvote.org/uploadedFiles/SMVote/2016(1)/Election%20Calendar_website.pdf). Based on the path this Court has laid out,
16 a final judgment in this case should be entered by no later than
17 March 1, 2019. Therefore, a special election - a district-based
18 election pursuant to the seven-district map, Tr. Ex. 261, for
19 all seven city council positions should be held on July 2, 2019.
20 The votes can be tabulated within 30 days of the election, and
21 the winners can be seated on the Santa Monica City Council at
22 its first meeting in August 2019, so nobody who has not been
23 elected through a lawful election consistent with this decision
24 may serve on the Santa Monica City Council past August 15, 2019.
25 Only in that way can the stain of the unlawful discriminatory

1 at-large election system be promptly erased.

2 CONCLUSION

3 99. Defendant's at-large election system violates both the CVRA
4 and the Equal Protection Clause of the California Constitution.

5 100. Accordingly, the Court orders that, from the date of
6 judgment, Defendant is prohibited from imposing its at-large
7 election system, and must implement district-based elections for
8 its city council in accordance with the seven-district map
9 presented at trial. Tr. Ex. 261.

10
11 CLERK TO GIVE WRITTEN NOTICE.

12 IT IS SO ORDERED.

13 DATED: February 13, 2019


14
15
16
17 
18 YVETTE M. PALAZUELOS
19 JUDGE OF THE SUPERIOR COURT
20
21
22
23
24
25

EXHIBIT “B”

RE: PNA v. Santa Monica

From: Scolnick, Kahn A. (KScolnick@gibsondunn.com)
To: shenkman@sbcglobal.net; egordon@parrislawyers.com; miltgrim@aol.com;
robertrubinsf@gmail.com; rrex@parris.com
Cc: MMcRae@gibsondunn.com; DAdler@gibsondunn.com; mballer@gbdhlegal.com
Date: Thursday, April 25, 2019, 09:46 PM PDT

OK thanks – I'll try to connect tomorrow.

From: Kevin Shenkman <shenkman@sbcglobal.net>
Sent: Thursday, April 25, 2019 9:44 PM
To: Ellery Gordon <egordon@parrislawyers.com>; Milton Grimes <miltgrim@aol.com>; Robert Rubin <robertrubinsf@gmail.com>; Rex Parris <rrex@parris.com>; Scolnick, Kahn A. <KScolnick@gibsondunn.com>
Cc: McRae, Marcellus <MMcRae@gibsondunn.com>; Adler, Daniel R. <DAdler@gibsondunn.com>; Mike Baller <mballer@gbdhlegal.com>
Subject: Re: PNA v. Santa Monica

[External Email]

Kahn,

I am unclear on what exactly you are seeking. I have had experience "expediting" an appeal, but not "calendar preference," and I surmise that the term "calendar preference" can describe a variety of scheduling mechanisms to reach a decision more quickly.

Plaintiffs too would like to see a prompt resolution of Defendant's appeal, and, at the same time, ensure sufficient time to prepare a responsive brief. To that end, perhaps we should discuss stipulating to a briefing schedule that will ensure a decision sufficiently in advance of the statewide general election in 2020. I have reviewed the CCP sections you reference in your email below, and none seem to be applicable (other than perhaps by analogy) to our case, so calendar preference may not be the right option for that reason also.

Please feel free to call me at 310-457-0970 to discuss.

-Kevin

On Wednesday, April 24, 2019, 06:50:17 PM PDT, Scolnick, Kahn A. <KScolnick@gibsondunn.com> wrote:

Hope everyone has been well. The City is going to move in the Court of Appeal for calendar preference under CCP sections 35, 44, and 36(e) – asking for the Court to issue a decision by July 10, 2020, to the extent practicable (based on the timing of the completion of briefing, etc.). If we get a decision by then, and assuming no further proceedings in the Supreme Court, then we'd know one way or the other whether a November 2020 election could be held on an at-large basis, or whether it still would need to be district-based using Ely's district map, and there would be time for the City to plan accordingly.

Please let us know by COB Friday whether plaintiffs will oppose this relief, or whether we can tell the Court that plaintiffs do not oppose. I would think that calendar preference would be of interest to plaintiffs, too, under the circumstances, but that's obviously your call.

Cheers.

Kahn A. Scolnick

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PROOF OF SERVICE

I, Cheryl Cinnater, declare as follows:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 43364 10th Street West, Lancaster, California 93534. On May 2, 2019, I served the following documents:

**DECLARATION OF KEVIN SHENKMAN IN SUPPORT OF
RESPONDENTS' RESPONSE TO APPELLANT'S MOTION FOR
CALENDAR PREFERENCE**

***** See Attached Service List *****

- [x] **BY MAIL as follows:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U. S. postal service on that same day with postage thereon fully prepaid at Lancaster, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- [x] **BY ELECTRONIC SERVICE:** A true and correct copy of the above-titles documents were electronically served on the persons listed on the attached service list.
- [x] I am employed by R. Rex Parris, a member of the bar of this court, and the foregoing documents were printed on recycled paper.

Executed on May 2, 2019, at Lancaster, California.

 X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Cheryl Cinnater

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